(1987) 04 KAR CK 0008

In the Karnataka High Court

Case No : R.F.As. No''s. 158 and 159 of 1980

Ratnakar B. Kailaje APPELLANT

Vs

Ramrao Narasingrao Divigi RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

Bombay Public Trust Act, 1950 — Section 50, 50 (g)

Citation : (1987) ILR (Kar) 1486

Hon'ble Judges : Doddakale Gowda, J;Bopanna, J

Bench : Division Bench

Advocate : B. Gopalaiah and A.G. Holla, for the Appellant; V. Krishnamurthi, S.G. Bhat, Gunjal, Ullal and K.I. Bhatta, for the Respondent

Judgement

Doddakalegowda, J.—These appeals are preferred by certain persons belonging to an enlightened section of Hindus in this Country known as ''Saraswat Brahmins'' being aggrieved by the Judgment and decree of the Learned District Judge, Karwar, in an administration suit filed by four other persons belonging to the same community.

2. R.F.A. No. 158 of 1980 is preferred by defendants 10 to 18 and R.F.A. No. 159 of 1980 by defendants 19 to 28 against the judgment and decree dated 29th November 1980, passed in O.S. No. 2 of 1977 on the file of the District Judge, Uttar Kannada, framing a scheme u/s 50 of Bombay Public Trust Act, 1950 (hereinafter referred to as the ''Act'') in respect of Sri Chitrapur Math, Shirali Taluk, Bhatkal (hereinafter referred to as the ''Math'') at the instance of respondents 1 to 3 (plaintiffs) and one Vasantrao Koppikar who was plaintiff No. 1 before the Trial Court.

3. It is common ground that the Math is a public religious institution belonging to a denomination known as Saraswat Brahmins and is registered under the Act. Respondent-5 is the Mathadhipathi of the Math and Respondent-4 is Charity Commissioner.

4. Plaintiffs brought this suit to frame a scheme for the administration and management of the Math u/s 50 of the Act, after obtaining the necessary sanction from the Commissioner. Four instances referred to in the plaint in support of the reliefs claimed in the suit are that :

(i) there exists a constitution framed in 1932 and also a scheme, but that scheme had not received the sanction of the Court ;

(ii) Respondent-5/Matadhipathi desires to relinquish his office of trusteeship and only remain as spiritual Head and Guru ;

(iii) in Enquiry No. 4 of 1976 held against the Matadhipathi, the Commissioner had declined to remove him and consent sought for prosecuting him was also refused and the matter is now pending in appeal ; and

(iv) both the Math and Matadhipathi are involved in litigation.

The plaint averments disclose that the Math derives considerable income from fairly extensive moveable and Immovable properties possessed by it. His Holiness Swamy Parijnanashram, Respondent-5, is the 10th Matadhipathi and the sole trustee of the Math. The main objects of the math are :

(a) Worship of Lord Bhavani Shankar and Samadhi of the Gurus of the Community ;

(b) The upliftment of the spiritual welfare and general well being of Chitrapur Saraswat Community ; and

(c) The propagation of Hindu Sanathana Dharma.

It is stated that in Enquiry Case No. 4 of 1976, the Commissioner had declined to remove His Holiness from the Trusteeship and also refused to accord permission to prosecute him. It appears, the appeal preferred before the Karnataka Appellate Tribunal as against this order is pending.

5. After tracing the origin of Math, to which we will advert to later, as there is no controversy over it, it is stated in the plaint that on framing of the Constitution in 1932, the Mahasabha consisting of all the members of the Community used to meet once in five years ; that members of the Standing Committee constituted for the purpose of administration of the Math got elected by the General Body of the Community consisting of persons paying Vantiga to the Math ; that the Committee is incharge of day-to-day administration of the temple and Math, collecting necessary funds from the Community It is averred that Respondent-5 is anxious to give up his administrative functions completely and for that purpose intends to give up his office of trusteeship and remain only as the spiritual Head and Guru ; that a scheme" framed to give effect to his desire has his approval and blessing; that the Mahasabha held at Shirali on 2nd and 3rd April 1977 had unanimously approved the terms of the draft scheme annexed to the plaint ; that the Standing Committee in its meeting held on 3rd July 1977 in Bombay had ratified it. Thus, it is submitted that the scheme has the approval and consent of

the Saraswat Community as a whole and it is in the larger interests of the temple, the Math and the community generally.

6. The reasons assigned for the Court to deem it necessary to frame a Scheme read thus :

"At present there is no scheme or trust, and his Holiness Swami Parijnanashram is the sole trustee. The said Swamiji himself as well as members of the Sri Chitrapur Saraswat Community, desire to give effect to the proposed scheme and the Swamiji desires to relinquish his office of trusteeship after the scheme comes into force."

Based on these averments, the reliefs sought for are :

(i) a scheme be framed or settled for the management and administration of the Math in terms of the draft annexed to the plaint or in such other modified form ; and

(ii) to provide for the appointment of Trustees and vesting of property, etc.

7. The appellants filed their written statements separately. We will first make a reference to the common pleas taken by them and then to the specific pleas taken in their respective written statements.

These appellants disputed the correctness of the sanction accorded by the Commissioner; they contend that the suit as brought does not fall within the ambit of Section 50 of the Act, as conditions contemplated in this provision do not exist; that there is no averment that the administration of the Math cannot be carried on under the existing constitution and not even a suggestion of breach of trust or misconduct in the administration of the Math; that no relief is sought for the removal of Matadhipathi and the suit is essentially to vindicate the personal rights of plaintiffs by having respondent-5 as Guru and relieving him of Trusteeship; that respondent-5 is the spiritual head as well as the sole trustee and the two offices are so interwoven and inextricably blended with each other that one cannot be separated from the other; that bifurcation of spiritual and Secular functions of the Matadhipathi is impermissible; that whittling down of the temporal functions could only be done by removing him from the spiritual office ; that severance of status and functions is opposed to custom, usage and tradition of the institution ; that such a course of action violates the principles embodied in Articles 25 and 26 of the Constitution of India ; that the Matadhipathi should be spiritual-cum-secular office holder, is a matter accepted by the religion; faith and beliefs of the Saraswat Community that the Math requires a celibate Sanyasi as its spiritual head and as sole trustee; therefore appointment of non-celibate trustee would contravene the provisions of Sections 18 and 19 of the Act ; if effect is given to the draft scheme it reduces the status and dignity of Matadhipathi apart from placing him at the mercy of the trustees and that the proposed scheme affects the status and rights of future generation of Matadhipa this as well as the laity.

7A. Defendants 10 to 18 specifically pleaded that consequent on the introduction of certain innovations to the Constitution in 1932 by late revered Ananda Ashrama Swamiji (the 9th Guru), the Standing Committee and other Committees functioning under the Constitution are acting only as Advisory bodies ; that the Matadhipathi is the sole trustee of the properties of the Math as well as those endowed to Lord Bhavani Shankar, the Presiding Deity ; that the Matadhipathi enjoyed the powers of interference and veto ; that till Sri Ananda Ashrama Swamiji attained Mahasamadhi in 1966, the Committee functioned smoothly and there was hardly any occasion or none at all for interference by the Matadhipathi. All the troubles which have beset the Math commenced after the passing away of the previous Matadhipathi; that there have been many unpleasant incidents and episodes and the Math and Matadhipathi have been involved in a number of unsavoury litigations ; that the existing scheme could not be regarded as a scheme unless it had received the sanction of Court. They also disputed that the scheme had received the approval either of the Mahasabha or of the Standing Committee or of the Community as a whole ; that there is neither a need nor necessity to frame a scheme and it is only a device to save the Matadhipathi from various litigations pending or in the offing. It is a scheme suit for the continuance of the existing incumbent as Matadhipathi who is averse to continue as the sole trustee and for gratification of the worldly desire of Matadhipathi ; that the suit is collusive and is utterly lacking in bona fides ; that the Court cannot accord sanction to a scheme which has sinister implications. According to them, the beneficiaries of this institution are only a few persons belonging to the Saraswat Community and the proposed scheme converts the religious institution into a public charitable trust.

8. After referring to the existing administrative chaos, these defendants contend that the Standing Committee is incapable of dealing with the situation ; that the whole atmosphere of the Math is vitiated and the sanctity with which it was viewed for over centuries has gradually disappeared and the Math is fast heading towards disintegration ; that the proposed scheme does not serve the purpose of restoring the Math to its original pristine glory ; that the only way in which normalcy could be restored is by the imposition of some rational scheme by the Court, for which, they are ready and willing to co-operate in evolving a workable scheme. Later on, they proceed to pin-point the defects in the clauses which are opposed to their religious faith and beliefs which will be dealt with a little later while dealing with merits of the issues framed in the suit.

9. Defendants 19 to 28 in their written statement pleaded that Respondent-5 who was installed as their Spiritual Guru, by virtue of his office is also a Matadhipathi and hence subjected himself to all the obligations pertaining to the spiritual, moral and secular attributes of that office. They contend that unless it is established that the written Constitution of the year 1932 cannot be given effect to or administration of the Math cannot be carried on in consonance with its provisions, the reliefs sought for by the plaintiffs are misconceived. They also disputed the validity of approval accorded to the draft scheme at the meeting of

Mahasabha and the subsequent ratification by the Standing Committee.

10. It is relevant to notice that during the pendency of the proceedings before the Trial Court, 5th respondent by his letter dated 25-11-1979 addressed to the Court below expressed his desire not to continue as Matadhipathi with effect from 1-12-1979.

11. Parties did not adduce oral evidence, but filed their written arguments. They relied on a number of documents produced by them ; plaintiffs produced and marked Ex. P-1 to Ex, P-14 ; defendants got marked Ex. D-1 to Ex. D-25.

12. On the basis of the pleadings and documents, the Trial Court framed as many as 25 issues - 18 in the first instance and 7 issues subsequently. Some were answered in the affirmative, some in the negative and on certain other issues the Trial Court held no findings were necessary Out of these 25 issues, reference is made only to certain important issues in this Judgment viz., (1) whether the suit as framed satisfies the requirement of Section 50 of the Act. Issues 6 to 8 together constitute one issue i.e., (2) whether there is need or necessity for a scheme or whether a scheme already exists or whether the proposed scheme could be accepted in toto; (3) Issues 10, 11 and additional, issue No. 3 relate to validity of relinquishment of office by respondent-5 Matadhipathi and its consequences 14 additional 6th issue is as to whether there could be an interim scheme or an interim arrangement till a successor to respondent-5 is installed; and lastly (5) the nature, of relief, if any, that could be given to the plaintiffs.

13. The Trial Court held that suit as framed u/s 50 of the Act was in order and maintainable; that the reliefs sought for were not to vindicate individual or personal rights; that the sanction accorded by Charity Commissioner to file this suit to frame a scheme for administration and management of the institution, was not open to challenge and that the pleadings themselves made out a case of requirement of a scheme The Trial Court after referring to the Constitution framed in 1932, resolution of the Mahasabha and Standing Committee, the various discourses of the Matadhipathi delivered at several inaugural functions and authentic literature pertaining to the institution held that the custom regarding dichotomy of powers and functions of the Matadhipathi is established and consequently the trustees could be appointed for the secular management of the institution. Relying on letter dated 25-11-1979, written by respondent-5, the Trial Court held that he had ceased to be the Matadhipathi of the Math.

14. The validity of the scheme framed pursuant to these findings is questioned by the appellants on various counts viz., (a) there could be no Math without a Matadhipathi and without hearing either the Matadhipathi or the Math no scheme could have been framed; (b) severance of secular office of Matadhipathi from his spiritual office is impermissible, that in view of the existence of the Constitution framed in 1932, there is neither the need nor necessity to frame a scheme; (c) that the ingredients of Section 50 of the Act are not established warranting a scheme for administration of the Math; and (d) the suit is not a representative

suit and the plaintiffs having not complied with the provisions of Order I Rule 8 of C.P.C. the suit should have been dismissed in limine.

15. Sri Gopalaiah, learned Counsel for appellants in R.F.A.No. 158 of 1980, fairly and rightly submitted that issues 1 to 4, 10 to 14 and additional issues 3 to 5 are not pressed. Plaintiffs, who had set the ball in motion, the Matadhipathi, i.e., respondent-5, and the Commissioner have remained exparte. The contest mainly appears to be as amongst some of the trustees nominated by the Matadhipathi under the scheme sponsored by him and some of the trustees appointed under the scheme framed by the Court and Ex-Members (i.e members of the various committees during the regime of Sri Anandashram Swamiji - the 9th Guru).

16. Thus, the main controversies which require consideration in these appeals are :-

(1) Whether the fifth defendant had ceased to be a Matadhipathi ? If so, whether a scheme could be framed without hearing the Math or Matadhipathi or without anybody representing them ?

(2) Whether Dichotomy of secular functions and spiritual functions is permissible in the office of Matadhipathi ? Whether, custom, usage or tradition and practice of the Math permits such severance ?

(3) Whether the ingredients of Section 50 of the Act are established to frame a scheme ?

(4) Whether the suit is liable to be dismissed as the same is not in the form of a representative suit and for non-compliance of the provisions of Order I Rule 8 of C.P.C. ?

17. The last two points may conveniently be dealt with first before we deal with the subtle intricacies involved in a simple suit to frame a scheme.

The institution in question is a public religious institution and registered under the Act. Remedy provided u/s 50 of (he Act is the same as the remedy provided u/s 92 of the Civil Procedure Code. Indisputably, a suit of this nature is representative in character. The object of treating it to be a representative suit is to see that the decision rendered by the Court should bind all persons having the same interest, though they are not factually impleaded as parties and to avoid conflicting decisions and multiplicity of proceedings. The normal procedure prescribed is to seek permission of the Court or an authority to sue or to be sued or defend on behalf of or for the benefit of all persons interested in the institution and notify such persons interested by publication in news paper or by any other mode which in the view of the Court would meet the requirement of such procedure. Plaintiffs have, in I.A II, sought for permission of Court to publish the fact of institution of the suit in ''Karnataka News'', a weekly paper of Kumta, having a limited circulation at Shirali, where the Math is situate. This application was supported by a memorandum of facts filed by the Learned Counsel for plaintiffs. It is stated in that memorandum that the suit is brought u/s 50 of the

Act and it is just and necessary that a public citation by means of publication, in a local news paper, be made for the information of the general public and also of the devotees of the Math. The Court had accordingly granted per-mission on the same day for such publication. The ''Karnataka News'' weekly dated 12-1-1978 had been produced by the plaintiffs in the Court in proof of having published this notice (vide Order Sheet, dated 30th January 1978).

Defendants 3 to 9 got themselves impleaded as parties by filing I.A. No. I dated 5-12-1977. Defendants 10 to 18 got themselves impleaded by filing I.A. No. III under Order I Rule 8(3) and 10(2) of the Code of Civil Procedure. I. As.I. and III were allowed on 30th January, 1978. Defendants 19 to 28 got themselves impleaded by filing an application dated 9-4-1978 - vide order on I.A. No. V dated 29-5-1978.

18. The contention of Learned Counsel for appellants is that the suit was not brought in a representative capacity and there was no notice of the institution of the suit to devotees residing in different parts of India and elsewhere and hence the same being not in consonance with Order I Rule 8 of the Code of Civil Procedure, the suit should be dismissed. It is further contended that publication of the fact of institution of the suit, in a local Kannada paper with limited circulation confined to a particular area, could not be treated as sufficient notice in the eye of law.

Instead of seeking permission of the Court as enjoined u/s 92 of the CPC plaintiffs have instituted this suit after obtaining the necessary sanction of the Commissioner u/s 50 of the Act. Section 50 of the Act contemplates that two or more persons interested in the institution may seek permission of the Commissioner to institute a suit seeking the relief of framing a scheme. The Commissioner being satisfied that the plaintiffs were prosecuting the suit in a representative capacity, had accorded his sanction and endorsed the same on the plaint. In fact, the Commissioner before according sanction had heard the Matadhipathi and the objectors. Ex D-18 is the application filed for sanction, Ex. D-17 is the statement of objections and Ex.D-25 is the certified copy of the letter written by Respondent-5 and Ex. D-l is the certified copy of the order. It is only on consideration of the objections, the sanction was accorded and hence, there is no substance in the plea that the suit had not been brought in a representative capacity.

19. So also, there is no substance in the plea that there was no wide publication of the notice of institution of the suit. A scheme intended to be given effect to had been discussed by the delegates of the Mahasabha and by the Standing Committee and had been notified in a Magazine ''SUNBEAM'' published by the Math. It is necessary to mention that this Magazine is the official organ of the Math to keep the laity informed about the Math''s affairs and is distributed free of cost to all the vantage payers. Originally a quarterly publication, it has become a monthly Magazine and is supplied only to subscribers. No defence was taken before the lower Court that lack of proper publication had occasioned injustice or

prejudice to the appellants. No such grievance is made in the Memorandum of Appeal. The fact that the draft scheme, as approved by delegates of Mahasabha and the Standing Committee, would be presented to the Court had been notified in this Magazine. Thus, it is clear, all the persons interested in the Math''s affairs had been notified. The very fact that the appellants on their volition have been impleaded as parties, do establish to a certain extent, that there was proper publication of the notice of institution of the suit. Assuming for the sake of argument that there is some substance in this plea, having regard to the provisions of Section 99 of the Code of Civil Procedure, this defect cannot be held to be fatal to the suit.

20. RE: REQUIREMENT OF Section 50.- Persons interested in a religious or charitable Trust can seek relief u/s 50 of the Act either complaining of breach of trust or mismanagement or seek a direction to frame a [scheme for the proper administration and management of the institution, The word ''or'' in Section 50 makes manifest Legislative intendment. Even in the absence of plea of breach of trust or mismanagement, if plaintiffs make out a case of need or necessity of framing a scheme, the Court having regard to the fact that it is a public religious institution, is bound to frame a scheme. Failure to plead breach of trust or mismanagement cannot be a ground for dismissal of the suit. As rightly pointed out by the 1 Trial Court, the necessary ingredients of Section 50 are established and hence the suit is maintainable.

21. Proceedings of this nature are analogous to administrative action. The Courts are enjoined to protect the interest of public Trusts. The plaint is in "conformity with Rule 27 of the Rules framed under the Act and Form No. 41 of Appendix-A of the Code of Civil Procedure. A Division Bench of Bombay High Court in Chhaganlal Uderam Gour Vs. Sobharam Harishankar Gour, has held that the Court dan frame a scheme where its directions are necessary even though there had been no breach of trust. The Supreme Court in Harendra Nath Bhattacharya and Others Vs. Kaliram Das (Dead) by his Heirs and Lrs. and Others, has ruled that :

"It is well settled by the decisions of this Court that a suit u/s 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the Trust. In the suit, however, there must be a prayer for the one or other of the reliefs that are specifically mentioned in the Section Only then the suit has to be filed in conformity with the provisions of Section 92 of the Code of Civil Procedure."

The same view is reiterated in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, .

"A suit u/s 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the Section. If the allegation of breach of trust is not substantiated or if the plaintiff has not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the Section would fail."

Lack of pleadings regarding mismanagement or misappropriation under the first part of Section by itself is no good ground to deny the relief under the second part, if facts mentioned hereunder make out a case for sanctioning a scheme.

22. RE: NEED OR NECESSITY TO FRAME SCHEME. -

Is there a compelling need to frame a scheme by Court ? As already indicated, the plaintiffs have brought this suit to frame a scheme for proper administration and management of the Math alleging certain facts which according to them justify a direction of Court to sanction a scheme.

Defendants 10 to 18 in para 8 of their written statement have stated thus :--

"These defendants deny the averments in paras 4(h) and (i) of the plaint, that there is no scheme as present and that the Swamiji himself, as well as the members of the Community desire to give effect to the proposed scheme. The present existing arrangements regarding the Management of the lay affairs of the Math, cannot but be regarded as a scheme, though it has not so far received the sanction of the Court."

Again at paras 16, 17 and 18 they have stated thus :

"16. It is with very deep sorrow that these defendants are constrained to mention certain facts. Almost immediately after passing away of previous Matadhipathi in 1966, deterioration in the affairs of the Math set in. Till then the Standing Committee administered the lay affairs of the Math. The last 10 years however, have been a nightmare to the laity.

The Math and defendant-2 are involved in a spate of litigation, civil and as well as criminal, some of them perhaps pending.

There have been serious complaints about the administration, both on the religious as well as the secular side. Sevas and rituals followed scrupulously during the previous regime have been either eliminated or curtailed.

The Learned Archaks and priests attached to the Math are treated with scant respect and as menials. Part of the Math converted into a Museum and the activities of the Math have been extended for beyond the objects of the Trust. The sacred atmosphere of the Math has been defiled.

There have been serious complaints of misapplication of funds and that accounts have been juggled.

17. It distresses these defendants to state that the Standing Committee in all

these ten years has been utterly incapable of dealing with the situation in the Math. The present Committee has either turned a blind eye to the grave happenings in the Math or are conniving at it. At the moment the Standing Committee appears to be totally paralysed ; and the little influence it had, appears to have passed into the hands of unscrupulous elements. Some members of the previous Standing Committee and the Sub-Committees could not stand the drift in the affairs of the Math and resigned in protest about the year 1974. Devotees flocked to the Math in search of peace of mind and tranquility and they got it in abundance till 1966. The holy atmosphere of the Math and the sanctity with which the Math was viewed for over two centuries has virtually disappeared. Instead, it has become a place of intrigues and machinations, and is fast beading towards disintegration

In the circumstances narrated above these defendants feel that the only authority which can set matters right is this Hon''ble Court. The defendants reiterate that the Scheme, presented to the Court by the plaintiffs, will never serve the purpose of restoring the Math its original pristine glory.

These Defendants are firmly of the opinion that the only way in which the normalcy can be restored is by the imposition of some rational scheme by the Court. These defendants along with others are prepared to suggest such a scheme. These like minded defendants humbly pray that this Hon''ble Court pleased to examine in details the facts that have caused to the present turmoil and the persons responsible for the same. These defendants willingly co-operate with the Court in the search for a scheme which will restore the Math to its original status."

Defendants 19 to 25 and 27 and 28 in para 11 of their written statement have stated thus :

"It is not denied that there is in this institution fortunately a specific scheme with a written constitution which has been functioning smoothly since 1932. On the contrary the same has been adopted and produced with the plaint as part of the plaint draft scheme. It is not stated either that the said scheme has failed or is not operating effectively or by reason of any changed circumstances is inadequate or incomplete for achieving the objects of the trust originally intended. The plaintiffs are put to strict proof as to the need for the plaint draft scheme."

They have further stated that the settlement of scheme as proposed by the plaintiffs is only a device to conceal the acts of mismanagement. Referring to the deliberation on the merits of the scheme at the meeting of delegates of Mahasabha in 1974, they have stated that a resolution had been passed modifying the scheme but such modification is invalid and inoperative as the said resolution was not in consonance with the Constitution governing the Math.

23. The third Resolution of the Mahasabha (as extracted at page 71 of the Paper Book) reads thus :--

"This Mahasabha is further of opinion that, in the event referred to in Resolution 2 actually taking place, the President of the Standing Committee should arrange to institute, in the appropriate Court a suit to obtain a decree for the settlement of a scheme for the administration of the trust and also for interim relief enabling His Holiness in association with the Standing Committee, to carry on as before pending such settlement."

This resolution contemplates initiation of Court proceedings to obtain the necessary sanction.

24. The Privy Council in AIR 1934 53 (Privy Council) and |in AIR 1946 34 (Privy Council) has held that in cases of a trust for public purposes of a charitable and religious nature, the primary duty of the Court is to consider the interest of public and determine the best course for its administration in the exercise of its discretion. It is also well established that in determining the need or necessity of a scheme, the Court can take into consideration the history of the institution in conjunction with the surrounding circumstances. Having regard to all these factors, we are satisfied that the pleadings excerpted above, themselves, establish the necessity of issuing a direction to frame a scheme. The conclusion of trial Court on this aspect is, therefore, unassailable.

25. In fact, it must be said to the credit of the learned Counsel appearing in this case that none of them disputed the necessity of framing a scheme for the proper administration and management of the Math. But, certain riders which they added are - (i) that there could be a scheme only in conformity with the Constitution framed in 1932 and (ii) severance of secular office from the spiritual office of the Matadhipathi whittles down the powers of Matadhipathi, which, according to them, is impermissible. This submission was made without prejudice to their right to urge that there could be no scheme without a Matadhipathi or without hearing the Math.

26. Whether there could be a scheme for a Math for which there is no Matadhipathi in present and whether the Math is a necessary party in an administration suit?

As these issues are inter-connected, they are dealt with together to avoid repetition or overlapping of relevant facts. It is certainly not an easy task to define the interest of a person in an administration suit who sues or is sued since the interest of a person varies according to the object and nature of endowment and his position in relation thereto. But the touch stone of his right is his interest in the endowment. Matadhipathi is the fountain head of the institution; he adorns the Peetha; he initiates candidates into the mysteries of the cult; supervises the worship of the presiding deity and the accustomed spiritual rites; he combines in himself the duel office of religious or spiritual head of the particular cult or religious fraternity and of the Manager of the secular properties of the institution. It is true that moveable and Immovable properties of the Math vest with the Math and Matadhipathi is only a trustee It is unnecessary to embark on a treatise on the status of Matadhipathi as it is settled by the decisions of the highest Courts. Both the Privy Council and the Supreme Court have held that the properties of the Math are held by the Mahant as their owner. The nature of ownership is an ownership in trust for the Math or the institution itself. The Administrative powers are undoubtedly vested in the reigning Mahant.

The Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., has explained the status of Maradhipathi thus :

"Mohantship is not a mere office. A superior of a Mutt has not only duties to discharge in connection with the endowment but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property -- Thus in the conception of Mahantship as in Shebaitship, both the elements of office, and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mohant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties.... It is true that Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply .... He is certainly not a trustee in the strict sense. He may be, as the Privy Council vide Vidya Varuthi v. Baluswami (AIR 1922 PC 123) says manager or custodian of the institution who has to discharge the duties of a Trustee and is answerable as such .... "

In Sri Sarangadevar Peria Matam and Another Vs. Ramaswamy Gounder (Dead) by Legal Representatives, it is held thus :

"A Matadhipathi is the manager and custodian of the institution. The office carried with it the right to manage and possess the endowed properties on behalf of the math and the right to sue on its behalf for the protection of those properties. During the tenure of his office, the Matadhipathi has also large beneficial interests in the math properties."

The Supreme Court in Krishna Singh v. Mathura Ahir and ors. AIR 1980 SC 707 has reiterated the same view as under :

"The property belonging to a Math is in fact attached to the office of the Mahant, and passed by inheritance to no one who does not fill the office. The head of a Math, as such, is not a trustee in the sense in which the term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution."

A Full Bench of Bombay High Court in Babajirao Gambhir-Singh v. Laxmandas Guru Raghunathdas ILR 28 Bom 215 has observed that:

"A Math like an idol is, in Hindu Law, a judicial persona capable of acquiring, holding and vindicating legal rights through the medium of some human agency. When the property is vested in the Math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is vested in the manager, but because it is the established practice that the suit should be brought in that form."

In Perla Annapurnamma Garu and Another Vs. Collector of Vizagapatam, Rajamannar, C.J., speaking for the Bench has held that a person who is in possession of the property will be a proper party to the suit u/s 92 of C.P.C. In Bimal Krishna Ghose and Others Vs. Shebaits of Sree Sree Iswar Radha Ballav Jiu and Others, it is held that a deity is not a necessary party to a suit for the framing of a scheme, unless of course its interests are likely to be affected by the scheme proposed and if necessary a direction be given to implead the deity as a party through a proper and disinterested person at a later stage of the suit when the scheme would be finally approved, if it appears to the Court that such a step is necessary. The above ratio is followed in the subsequent decision of the same High Court in Upendra Nath Chatterjee Vs. Nilmony Chatterjee, . Even on this count also, if Math is a necessary party, it can be impleaded as a party at a later stage in the suit on the same lines, as indicated above.

It is, having regard to this legal status, instead of impleading the Math as party, the Matadhipathi the 5th respondent-had been rightly and properly impleaded as party and therefore the non-inclusion of Math is not fatal to the suit.

27. The other incidental question that arises for our consideration is whether the, 5th respondent had abdicated his position as Matadhipathi or not.

As already indicated, the suit was filed to direct the framing of a scheme as Respondent-5 was desirous of relinquishing the trusteeship. During the pendency of the proceedings, the 5th respondent had addressed a letter dated 25th November, 1979 to the Commissioner endorsing a copy to the Court. The letter reads thus :

"At present, I am the Sole Trustee of Shri Chitrapur Math, Shirali, Bhatkal Taluka, Uttar Kannada District, registered under P.T.R. No. A/347/Karwar, and my name appears in your record as the Sole Trustee.

I feel that I held such office as the sole trustee, solely because I happen to be the Matadhipathi of Shri Chitrapur Math, having been taken as a Shishya by my most revered Guru Swami Anandashram, who during his life time was the Matadhipathi and the sole Trustee.

I have on my own decided to cease to be the Matadhipathi with effect from 1-12-1979. As such, I feel that naturally I should cease to be a trustee and accordingly I relinquish the Sole Trusteeship."

Submission of Sri Gunjal, Learned Counsel appearing for some of the respondents is that he had only relinquished his Trusteeship and had not expressed his desire to abdicate the functions of a spiritual head and in the context in which the letter is addressed, it must be held that he still continued to be a Matadhipathi. Per contra, the submission of the Learned Advocates appearing for the appellants is that he had relinquished his office and there was no Matadhipathi for the Math. They further submitted that assuming that the suit is in order by impleading the Matadhipathi as party, as he bad subsequently relinquished his office, there was nobody in the eye of law to represent the interests of the Math and consequently no scheme could have been framed without hearing either the Math or the Matadhipathi. Further, they submitted, no scheme could be framed in the form in which it was proposed by the plaintiffs which had the effect of lowering the status of succeeding Matadhipa this.

28. This issue inevitably lends a different complexion to the whole problem. The finding of the Court below is that the 5th respondent had abdicated his office of Matadhipathi and consequently the finding on Issues Nos. 10 to 12 do not survive for consideration. This finding is not questioned by the 5th respondent. The wording of this letter gives no scope for quibbling. The 5th respondent had unequivocally staled that he ceased to be a Matadhipathi with effect from 1-12-1979. This Court was at pains to note that this religious institution was without a Matadhipathi ever since 1979 and tried to explore the possibilities of installing the Matadhipathi, but the parties are at variance on the mode of installing a Matadhipathi. One section is hostile towards Respondent-5 and the other section is supporting him. It looks as though the mode of installation of Matadhipathi in whichever form must end in a declaration by a Court of law. The prospects of having a Matadhipathi in the near future appears to be bleak for want of an agreed solution by the two warring factions of this enlightened community.

29. As observed by the Supreme Court in Sri Mahalinga Thambiran Swamigal Vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal, , succession to the office of Mahant or Head of a mutt is to be regulated by the custom of the particular mutt and in most cases, especially in Southern India, the successor is ordained and appointed by the Head of the Math during his own life time and in default of such appointment, the nomination may rest with the head of some kindred institution or the successor may be appointed by election by the disciples and followers of the Math, or, in the last instance, by the Court as representing the sovereign.

A Division Bench of this Court in Shiva Murthayya Guru Appayaswamy v. Madiwalappa 1982 (1) KLJ 41 to which one of us was a party has held thus :

"When it is a matter of appointing a successor to the headship of a math, it is a matter of complexity involving religious practices and principles governing succession to a Matadhipathi and the same cannot be equated with the ordinary mode of succession to an office of trustee as contemplated u/s 1" of Bombay Public Trusts Act, 1950 and the same falls outside its purview. The Act does not provide for a proper procedure for determination of such disputes. Hence, the authorities under the Act have no jurisdiction to decide the dispute as to succession of the headship of a math and the mode of succession thereof. ILR 1970 Kar. 1861 FB rel. on.

Where after the death of the Swamiji, there has been no successor properly and legally installed, there is no question of registering the name of the successor u/s 22 of the Act."

Filling up of the office of Mahantship depends upon the custom or usage and the practice which prevails in this Math. Hence, we are constrained to allow the matter to rest there, as it is for the laity to install a Matadhipathi in whatever permissible form consistent with the custom or usage or practice.

30. That take us to the next question whether the Court can frame a scheme in respect of a Math for which there is no Matadhipathi ?

In ease of an unexpected vacancy in the office of Mahant by death, relinquishment, etc. the Math does not cease to exist. If a Mahant nominated/ ordained is under tutelage, necessarily there must be somebody to take care of the administration of the Math. If the plea that there cannot be a scheme in respect of a Math, for which there is no Matadhipathi were to be accepted, Article 26(d) of the Constitution and Section 50(g) of the Act will remain suspended or fin operative till a Matadhipathi is installed. In other words, or the operation of these provisions, existence of Matadhipathi is not a condition precedent. Dealing with this piquant situation, it is stated thus in English Law "A trust never fails for want of a trustee" and the same principle is incorporated in Section 59 of Indian Trusts Act. It would be useful to refer to Lewin on Trusts at page 695 :

"Trusts are always imperative, and are obligatory upon the conscience of the party entrusted. This Court supplies the defective execution of powers, but never the non-execution of them ; for the powers are meant to be optional But the person, who creates a trust, means it should at all events be executed. The individuals, named as trustees, are only the nominal instruments to execute that intention. And if they fail, either by death, or by being under disability, or by refusing to act, the constitution has provided a trustee. Where no trustees are appointed at all, this Court assumes the office in the first instance. There is some personality in every choice of trustees ; but this personality is res unius aetatis If the trust cannot be executed through the medium which was the primary view of the testator, it must be executed through the medium which the constitution has substituted in its place. A college is to be founded under the eye of five trustees. That cannot be. The death of the trustees frustrates that medium. What then ? Must the end be lost, because the means are, by the act of God, become impossible ? Suppose the question was asked the testator, "If trustees die or refuse to act, do you mean no college at all, and the heirs to take the estate ?'' ''No'' I trust them to execute my intention : I do not put it into their power whether my intention shall ever take place at all'' "

If trustees have an imperative power, committed to them and they either die in the testator''s life time or decline the office or disagree among themselves as to the mode of execution or do not declare themselves before their death or if, from any other circumstances the exercise of the power by the party entrusted with it becomes impossible the Court will substitute itself in the place of trustees, and will exercise the power by the most reasonable rule. The Court assumes the jurisdiction of exercising the power retrospectively and will take up the trust, whatever difficulties or impracticability may stand in the way; "

31. Matadhipathi is the head of a spiritual fraternity and by virtue of his office has to perform the duties pertaining to religious instruction. It is his duty to practise and propagate the religious tenets and precepts of which he is adherent. The object of the Math is to encourage and foster spiritual training and instruction by ensuring a competent line of teachers who could impart religious instruction to the disciples and the followers of the Math and to strengthen the religious tenets and beliefs of a particular school of spiritual thought. Math as a juristic person cannot achieve the above purpose without a Matadhipathi or a spiritual head or a presiding element. It is only in this context, it is stated that there can be no Math without a Matadhipathi. But it does not mean that a Math can never exist or its object be defeated by not installing the Matadhipathi and/ or the provision providing for framing of a scheme can be defeated for want of Matadhipathi. Hence, we find no substance in the plea that there could be no scheme in respect of a Math for which I there is no Matadhipathi.

32. In order to resolve the main controversy, it is necessary to have a glimpse at the origin of the math. Sri S. N. Koppikar one of the articulate members of this enlightened community, in his article dated - July 1927, as published in Ex.P.6 has given the history of Saraswat Community. Ex.P.6 is a compilation of informative articles written by various other persons at different periods published in ''Saraswat Quarterly'' and is captioned as ''Chitrapur Saraswat Miscellany''.

The ancestors of this Community appear to have hailed from Northern India and settled in South India at a place South of Gangavali river and at Gokarn. It is on record that they were occupying high posts in Government service and wielded much power during the reign of Chiefs of Kanara and Nagar in Mysore. This naturally excited the envy of others who decried them as Brahmans having no Swami or spiritual head of their own. On being questioned by the Chief of Kanara as to who their Swamy was, they took time to disclose the particulars stating that he was in Northern India and they required some time to bring him down to Kanara. In order to get over their predicament, the elders of the community in Gokarn offered special prayers and worshipped God Mahabaleshwar by fasting and by practising other religious observances. God Mahabaleshwar appeared in their dreams and informed them saying "There will be a sanyasi coming from the north tomorrow ; you will find him on the bank of the Kotiteertha; surrender yourselves to him ; and he will be your Swami". This dream came true and by the grace of Almighty, a sanyasi was seen the next day walking from Gangavali side. When he was accosted, he was pleased to state : "I have had orders from the merciful God Bhavanishankar to help you in your difficulties, and I have to obey His commands". He was Parijnana shrama-I. Then the Chief of Nagar invited him and permitted him to establish a Math known as Math of Chitrapur Saraswath community.

His successors are : Swami Shankerashram I (1720 to 1757); Swami Parijnanashram II, (1748 to 1773); Swami Shankerashram II (1764 to 1785); Swami Keshavashram (1781to 1823); Swami Vamanashram (1804 to 1839); Swami Krishnashram (1835 to 1863); Swami Pandurangashram (1858 to 1915); Swami Anandashram (1915 to 1966) and the 5th respondent is the 10th Guru. The Article styled as "Reminiscences of our Swamies" by the same author gives details of their accomplishments and achievements.

33. DICHOTOMY OF SECULAR AND SPIRITUAL FUNCTIONS :

The contention of Sri. Gopalaiah and Sri. A.G. Holla, learned Counsel for the appellants and Sri. Ullal, learned Counsel for some of the supporting respondents, is that these two functions are so interwoven and inextricably blended with each other that neither of them could be separated from the other; that the impugned scheme providing for vesting of Math property with the Board of Trustees and entrusting overall control of the Math to the Board of Trustees is impermissible under law and opposed to the Constitution of Math itself and, hence, it is liable to be set aside or modified as the Court deems fit. Sri. V. Krishna Murthy, learned Senior Advocate appearing for contesting respondents, contended that at no time there was a fusion of temporal and secular powers in the office of the Matadhipathi and that the representatives of laity had ample opportunity to administer the affairs of the Math. He sought to sustain the scheme, pleading existence of custom, regarding dichotomy of powers in the office of Matadhipathi vis a vis other functionaries. He drew a distinction between custom, usage and practice and submitted that though it is not possible to establish custom from time immemorial, still having regard to the usage and practice, such severance of powers is permissible. Referring to the book styled as "History of Guru Parampara'' commencing from 1708 up to 1959, he contended that at no time the Matadhipathi had exercised secular powers of administration. He drew our attention to the ''Foreword'' in book marked as Ex.P.2 (which contains the inaugural addresses of the Matadhipathi to the Mahasabha for the years 1937, 1947, 1950) and contended that there was no unification of secular and spiritual powers in the office of Matadhipathi; that the scheme, as proposed, had the blessings of the Mata-dhipathi and the approval of Mahasabha. According to him Ex.P.2 itself is the repository of facts which are in controvertible and hence there was no need for any oral evidence to prove this fact as the recitals in the addresses are not contradicted. Relying on Sections 47, 48, 49, 60 and 87 of Evidence Act he contended that the recitals in the various documents, constitute proof of usage or practice.

34. In order to resolve this vexed question, it is necessary to set out the salient

provisions of the scheme framed, the constitution of the Mutt and also the rights and privileges of Matadhipathi.

The Scheme provides for four functionaries, viz., Matadhipathi, Mahasabha, Standing Committee and Board of Trustees. The Scheme mentions the objects and functions of these functionaries and qualifications to hold these offices. As per Clauses 8, 9, 13 and 19 of the scheme, property of the Math vests with the Board of Trustees and policy decisions in the matter of administration are required to be taken by the Board of Trustees. Clause 11 sets out the names of the first Board of Trustees and Clause 12 provides for nomination in case of vacancy by the Standing Committee.

35. The Preamble to the Constitution of the Math (about which there is no controversy as the 1974 amendment had not made any substantial variations to the original Constitution)(Ex.D-23), reads thus :

"WHEREAS it is, as a result of the growing activities of the Math, expedient to amend the Constitution of the Mahasabha, its Standing Committee and the Local Sabhas, in keeping with the mages and conventions hitherto observed for regulating its working and the need of the future as advanced and advocated by His Holiness and achieve the objectives it stands for, and WHEREAS for that purpose it is considered necessary to modify and/or clarify some of the existing provisions of the Constitution, it is hereby enacted as follows :"

''Mahasabha'' is defined to mean an assembly of delegates elected by adult Vantiga payers of local Sabhas, who are members of the Chitrapur Saraswat Community, and those nominated by the President with the prior approval of His Holiness as provided for in the Constitution. ''Sabha'', ''Local Committee'' and ''Vantiga payer'' are also defined. Delegates to Mahasabha consist of (a) persons elected from their Sabhas in their respective constituencies at special general meetings of adult Vantiga payers convened for the purpose by the Local Committees, and (b) persons nominated by His Holiness. The Special General Meeting of the Local Sabha shall elect their representatives for the Standing Committee out of the elected delegates, in the proportion of one member for every five delegates subject to minimum of one for each Sabha having not less than 25 Vantiga payers. Functions of Mahasabha are mentioned in Article 5 ; functions of the Standing Committee are set out in Article 10. All matters pertaining to administration and management of the Math are done on behalf of His Holiness. The Standing Committee derives power to administer the affairs of the Math through delegation by Matadhipathi. The President of the Maha-sabha shall also be the President of the Standing Committee. The Constitution provides for election of delegates and members.

36. The Supreme Court in a catena of cases had declared the rights and privileges of Matadhipathi with reference to Chapter III of the Constitution. In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., the Supreme Court was required to consider

the extent of executive interference with the right to manage the Math''s affairs in the matter of religion and constitutional validity of certain provisions of Madras Hindu Religious and Charitable Endowments Act (19 of 1951). The Madras High Court had held that the Matadhipathi had certain well defined rights in the institution and its endowments, which could be regarded as rights to property within the meaning of Article 19(1)(f) of the Constitution ; that the restrictions imposed by that Act were not reasonable within the meaning of Article 19(5) and consequently invalid ; that the Matadhipathi, as the Head and representative of a religious institution, had a right guaranteed to him under Article 25 of the Constitution to practise and propagate freely the religious precepts of which he and his followers profess to be adherents and infringement of such right is illegal and void. The High Court further held that the right of a religious denomination to manage its own affairs in the matter of religion through the Matadhipathi, who is a spiritual head, is a fundamental right under Article 26 and the provisions of the Act which substantially take away the rights of the Matadhipathi violate the fundamental rights guaranteed under Article 26 of the Constitution. On appeal, the Supreme Court ruled :

"-- He is certainly not a trustee in the strict sense. He may be, as the Privy Council, vide - ''Vidya Varuthi v. Balusami'' AIR 1922 PC 123(A) says, a manager or custodian of the institution who has to discharge the duties of a trustee and is answerable as such ; but he is not a mere manager and it would not be right to describe Mahantship as a mere office.

A superior of a Math has not only duties to discharge in connection with the endowment but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property.

Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other ... "

Though a trustee, his interest in Math property is held to be proprietary right. It further observed that :

"There is no reason why the word ''property'' as used in Article 19(1)(f) of the Constitution, should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether.

It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is incharge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant''s duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Matadhipathi down to the level of a servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged.

x x x x .... A Matadhipathi is certainly not a corporate body ; he as the head of a spiritual fraternity and by virtue of his office has to perform the duties of a religious teacher. It is his duty to practise and propagate the religious tenets, of which he is an adherent and if any provision of law prevents him from propagating his doctrines, that would certainly affect the religious freedom which is guaranteed to every person under Article 25. Institutions, as such cannot practise or propagate religion ; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is really immaterial for purposes of Article 25. It is the propagation of belief that is protected, no matter whether the propagation takes place in a church or monastery, or in a temple or parlour meeting."

Explaining the scope of words ''of its own affairs in matters of religion'' found in Clause (b) of Article 26 of the Constitution, the Supreme Court observed thus :

"It will be seen that besides the right to manage its own affairs in matters of religion, which is given by Clause (b), the next two clauses of Article 26 guarantee to a religions denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no Legislature can take away, whereas the former can be regulated by laws which the Legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which Clause (b) of the Article applies."

37. The Supreme Court after elucidating these principles held that certain provisions of the Madras Act as valid and certain other provisions as ultra vires of the Constitution ; Section 20 of the Madras Act which empowers Commissioner to pass orders as are specified in the Act without interfering with rights of Matadhipathi, sanctioned by usage or without lowering his position, for proper administration and due appropriation of income for the purpose for which such institutions were founded or exist, was held valid having regard to the status of the Matadhipathi and as they are public institutions. This power though

seemingly wide could only be exercised to ensure that the institutions are properly maintained and administered. Section 23 of the said Act which enjoins a trustee to obey lawful orders issued by the Commissioner or any subordinate authority, under the provisions of the Act, without offending his fundamental rights was held to be valid. Sub-section (2) of Section 30 of the said Act which provided for issue of guidelines for incurring expenditure after meeting the requirements referred to in Sub-section (2) of Section 70, fettering the powers of Mata-dhipathi was held invalid. Likewise, Section 31 of the said Act which required prior sanction of the Commissioner, for utilisation of surplus funds for the purposes specified in Section 59 was held invalid. Section 55 which declared ''Padakanikas'' received by Matadhipathi as the property of the Math without reference to the custom of the Math was held invalid. Dealing with ''Padakanika'' it held ''it may be that according to to the customs in a particular institution, such personal gifts are regarded as gifts to the institution itself and the Mahant receives them only as a representative of the institution, but the general rule is otherwise.'' "Section 58 which provides for framing of a scheme in respect of religious institution was held valid. Section 70 which deals with preparation of budget to religious institution was held valid. "A budget is indispensable in all public institutions and we do not think that it is ''per se'' unreasonable to provide for the budget of a religious institution being prepared under the supervision of the Commissioner or the Area Committee."

38. The right of Mahant to enjoy Math properties or the beneficial interest being incidental to practise and propagate religious tenets, was held to be protected under Articles 19(1)(f), 25 and 26 of the Constitution. We are not unmindful of the deletion of Article 19(1)(f) of the Constitution and also Article 41 of the Constitution. This deletion by itself will not abrogate or curtail the rights protected under Articles 25 land 26 of the Constitution of India. Even after deletion of Article 41 of the Constitution, the rights of the Matadhipathi which he possesses or which are protected could only be taken away in accordance with law vide Article 400-A of the Constitution.

39. Assuming for the sake of argument, that there is a usage or practice prevailing in the Math providing for severance of temporal and secular functions, that usage or practice runs counter to the scheme or rights guaranteed (extracted above) under the Constitution and therefore the same cannot be countenanced.

Secondly, the constitution of the Math framed in 1932 at an undisputed point of time during the reign of Shri Anandashram Swamiji (who, it is common ground, was held in high reverence by the entire Saraswat Community) and which underwent slight modifications in 1974, recognises the absolute control of the affairs of the Math by the Matadhipathi. The functions of the Mahasabha and various other functionaries are only of an advisory nature and they discharged duties that were entrusted or delegated to them. The preamble to this Constitution as extracted above itself states that it is ''in keeping with the usage and conventions higher to observed'' and hence it could be inferred that the scheme for the administration of the Math as provided in the Constitution was prevailing earlier also. In this view also, it must be held that usage or practice, if any, stood abrogated at any rate from the year 1932.

Thirdly Sri S. G. Bhat, Learned Counsel for the contesting respondents submitted that he had no objection for amending certain clauses in the impugned scheme, which according to the appellants are violative of Constitution of the Math or of the Constitution of India or of the religious faith and precepts of the community. In view of this submission we will have to examine in detail the nature and extent of grievance taking the scheme as a whole. We propose to deal with the merits and demerits after enunciating the principles on this aspect of the case.

A dispute of this nature is not peculiar to this institution or uncommon in India. To cite an instance, a dispute re-girding administration of the holiest shrine of Lord Venkateshwara in India situate at Tirupathi had to be resolved by the Judicial Committee - vide Prayaga Doss Jee Varu v. Tirumala Anandam Pillai Purisa Sriranga Charylu Varu and anr. 34 Ind. App. 78. The facts of that case disclose that the District Court had made a decree framing a scheme to remedy the existing abuses in the management of the temple. The mahant of Hathiramji math was retained as a sole trustee and a committee of control consisting of five persons was appointed to supervise his administration. In the appeal before the High Court, it observed :

"That the arrangement made in 1843 for the administration of the institution has not answered the expectations then entertained, that the mahants have shown themselves to be utterly incompetent to discharge the duties of the office properly, and that the surplus income has been misappropriated by them partly for their own personal use and partly for the aggrandisement of the mutt. Unless, therefore, steps are taken to impart real efficiency to the management, to provide checks against speculation and to arrange for due application of surplus funds not required for the usual and ordinary purposes of the institution, it is impossible to safeguard the interests of the institution. We agree, therefore, with the District Judge that this is a case for the Court sanctioning such a scheme. And it may be added that Sir V. Bashyam Aiyangar, who appeared for the mahant both in the lower Court and here, did not take any objection to a scheme being sanctioned. The controversy has been as to the machinery which the District Judge considered necessary to bring Into existence in the form of a committee consisting of five members who were to exercise minute and complete control over the mahant. And it was contended both before him and before us that it was beyond the jurisdiction of the Courts to establish such a controlling authority. And it was also strongly urged that it was not competent, in cases like the present, for the Courts to appoint new or additional trustees."

Further on it is stated :

"In addition to the matter of appointment of such new trustee the scheme should first and foremost provide for the utilization of the surplus funds coming into the hands of the trustees from time to time. The necessity for making such a provision is imperative to guard against the wasting or embezzlement of such accumulations in future which have been not only possible in the past but encouraged owing to the want of any provision for their utilization."

Accordingly, it modified the scheme by appointing an. additional trustee on a fixed remuneration as it was of the view that the machinery provided under the scheme was too cumber some to work smoothly and effectively: Even then, the schem -was not found satisfactory. The Mahant contended before the Judicial Committee that the effect of the scheme would be to lower his position and to weaken his authority. The Judicial Committee accepting his plea varied the form of the scheme, terms of which are found at page 85 of the Judgment reserving liberty to persons interested to apply to the District Court either for modification or issuance of direction as may be deemed necessary and convenient or to carry out the directions of the scheme, but the reasons assigned for framing the scheme were upheld.

The Supreme Court in Raje Anandrao Vs. Shamrao and Others, has declared that a provision for modification of the scheme can be inserted in the scheme itself :

"It seems both appropriate and convenient that a scheme should contain a provision for its modification as that would provide a speedier remedy for modification of the manner of administration when circumstances arise calling for such modification than through the cumbrous procedure of a suit."

If a similar or like provision is made in the scheme, aggrieved persons including the succeeding Matadhipathi can seek modification to bring it in conformity with the well established principles.

40. RE: MERITS AND DEMERITS OF THE SCHEME:

The real controversy between the parties is regarding the machinery for constituting a Board of Trustees to exercise minute and complete control over the Matadhipathi and over the Math properties. Contention of the appellants is that the scheme could only be in conformity with the Constitution of the Math which was in vogue ever since 1932. In other words, their contention is that the functionaries mentioned in the Constitution of the Math must find a place in the Scheme and they cannot be eclipsed. Swami Ananda-shram, the 9th Guru, with a view to enable all the disciples to participate in the administration of the Math constituted Local Sabha, Local Committee, Mahasabha, Standing Committee and such other Advisory Bodies to aid and assist him in the administration and management of the affairs of the Math. The learned Counsel for the appellants submitted that dichotomy of secular administration by the Board of Trustees conferring absolute power of administration including laying of policies and temporal functions by Matadhipathi reduces Matadhipathi to a non-entity. Such a form of administration is not merely opposed to the principles enunciated by the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs.

Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., but also to the Constitution of the Math in vogue ever since 1932. Thus, their main attack is against Clauses 8 to 19 providing for the Constitution of Board of Trustees and conferment of absolute powers on such Board.

41. Though there was an attempt on the part of the contesting respondents in the first instance to justify the Constitution of the Board of Trustees both having regard to the inherent right of a Court to appoint trustees in settling a scheme for the administration of a public religious and charitable institution as also to the custom or the practice prevalent in the institution providing for dichotomy of powers - Sri S.G.Bhat, learned Counsel for the contesting respondents, rightly and fairly submitted that they had no objection for variation of such of the Clauses in the scheme which are opposed in law to the notions of religious faith and beliefs of the Math''s disciples. The matter for determination, therefore, is as to the actual terms of the scheme to be sanctioned.

Sub-clauses (i), (ii) and (iii) of Clause 3 define ''Maha-sabha'', ''Standing Committee'' and ''Matadhipathi''. These definitions are the same as found in the Constitution of the Math. Clause 4 enumerates the object of the Trust. Clause 5 treats all moveable and Immovable properties belonging to the Math as Trust properties. Clause 6 enumerates the powers of Matadhipathi. Clause 7 provides for qualification of the Matadhipathi. Proviso to Sub-clause (i) of Clause 7 provides for the mode of filling up the vacancy of Matadhipathi. Clauses 8 to 19 provide for Constitution of the Board of Trustees, vesting of property, mode of appointment of new trustee in case of vacancy, qualifications to be a trustee, form of conduct of meetings and lastly Clause 19 confers power on the Trustees for taking policy decisions. The accounting year is to end with 30th of June of each year and trustees are required to place the audited statements of accounts before the Standing Committee in the month of December of that year and the trustees are required to make periodical reports of the working and administration of the Math once in six months to the Standing Committee or the Mahasabha and carry out and implement the suggestions as may be recommended by the Standing Committee from time to time, as far as possible.

42. It is nobody''s case that it is impossible to adhere to the Constitution of the Math or its provisions are obnoxious or opposed to law. Hence, the Constitution of the Math may be treated as part and parcel of the scheme framed u/s 50 of the Act.

43. Definition portions which are in consonance with the definitions contained in the Constitution of the Math may be retained as they are. Sri Bhat had no objection for deletion of Sub-clauses (d) and (g) of Clause 4. The remaining clauses in this clause not being opposed to the tenor of the Constitution may as well be retained. In Clause 5, all moveable and Immovable properties belonging to the Math including accretion are declared to be the Math properties. All properties vest with the Math. But there is no reference to ''Padakanika''.. As has been declared by the Supreme Court in The Commissioner, Hindu Religious

Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., will be self acquisition of Matadhipathi unless there is custom to the contrary. Hence, Clause 5 requires modification stating that all properties both moveable and Immovable excluding ''Padakanika'' shall be the ''Math Properties''. Sub-clause (iii) to Clause 6 which deals with ''Padakanike'' shall be deleted.

Sri Bhat had no objection for deletion of Sub-clauses (ii) and (iv) of Clause 6 as there cannot be such restrictions on Matadhipathi. As a result, Sub-clauses (b)(ii), (iii) and (iv) of Clause 6 be deleted.

44. There is no dispute relating to variation of proviso to Sub-clause (i) of Clause 7 of the Scheme. Sri S. G. Bhat has no objection for the substitution of the word ''Laity'' for ''Mahasabha'' and ''Kindred Math'' for ''Matadhipathi'' in this provision. The appellants had no objection for this modification. Clause 7 shall be retained as it is with the modifications mentioned above.

45. Sri Bhat had no objection for deletion or variation of clauses pertaining to the Constitution of the Board of Trustees, vesting and conferment of absolute power in such Committee. He had also no objection authorising the Matadhipathi to nominate the trustees, be it one-third or half, as he deems fit and proper. Constitution of such Board of Trustees an vesting of Math property with the Board of Trustees devalues the power of Matadhipathi. As already indicated, secular administration is incidental to the power to practise and propagate religious tenets and such power cannot be denuded lowering the status of Matadhipathi. The Standing Committee under sub Clause (iii) of Clause 10 of the Constitution of the Math (found at page 66 of Paper-Book II) can take steps to appoint trustees of the property of the Math if so directed by His Holiness and the vacancies could also be filled up on the advice of His Holiness. Functioning of the Mahasabha and the Standing Committee as contemplated under the Constitution of the Math ensures sufficient safeguard for the proper administration and management of the affairs of the Math and all those functionaries, aid and assist the Matadhipathi, the Head of the Math. In this view, there is no justification for incorporation of Clauses 8 to 19 and to Clauses 20, 21 and 27 which are incidental to those Clauses. Hence, they are set aside. Clause-25 contemplates that the trustees should place the audited statement of accounts before the Standing Committee in or about the month of December of every year as far as possible. In view of Sections 32 to 34 of the Act under which the Trustee is required to maintain accounts and get them audited, to ensure the proper receipt and custody of all offerings, income and investment of surplus funds and to prevent misappropriation of properties belonging to the Math, there is no necessity to incorporate a clause of this type in the scheme Suffice to state that the Math shall keep regular accounts in such form as may be approved by the Commissioner and shall contain such particulars as are required u/s 32 of the Act. The accounts shall be balanced each year on 31st of March or such other day as may be prescribed by the Charity Commissioner. The accounts shall be audited by such persons as are mentioned in Sub-section (2) of Section 33 and

the Auditor shall have access to the accounts and to all books, vouchers and other documents and records in possession or under the control of the manager. The Auditor shall prepare a Balance Sheet and Income and Expenditure Statement and file it in the Court in addition to sending copies to the Authorities mentioned in Sub-section-(1) of Section 34. He shall specify all cases of irregular, illegal or improper expenditure or failure or omission to recover monies or other properties belonging, to the Math or of loss or waste of money and whether it was caused in consequence of breach of Trust or misapplication or misconduct on the part of Trustee or any other person - See Sub-section (2) of Section 34. The trust property consisting of money which cannot be applied immediately or at any early date for the purpose of the Math shall be invested in the manner contemplated u/s 35. Restrictions imposed on alienations u/s (sic) of the Act shall be adhered to. Doctrine of Cypres is made applicable u/s 56 of the Act and the Charity Commissioner is required to give notice in writing to the Matadhipathi to apply to the Court within the time prescribed for necessary direction. Proceeding on the Cypres principles the surplus funds shall be appropriately spent for the (1)-establishment of educational institutions, for the promotion amongst Hindus of the teachings of the Hindu Religion and Shastras, with library and suitable buildings inclusive of residential quarters for the teaching staff as well as hostel accommodation for Students syishyas ; (2) distribution of prizes annually to persons possessing proficiency in the one or other of the various Hindu Shastras. Rules for the management of the College and award of prizes shall be framed by the Standing Committee and as may be approved by the Matadhipathi ; and (3) foundation and maintenance of hospitals, construction and maintenance of choultries or rest-houses for pilgrims and worshippers.

46. The Court below has not borne in mind that the scheme which it had to frame should be in conformity with the Constitution of the Math. Had the trial Court discerned the rights of Matadhipathi or understood the principles enunciated by the Supreme Court in Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, , The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and the matters that could be provided in a scheme, as enunciated by the Judicial Committee in Thirumala Temple, 34 Indian Appeals 78 and supreme Court in Raje Anandrao Vs. Shamrao and Others, , probably the scheme would have been perfect.

47. In view of the various infirmities, which we have pointed out and the modifications suggested, we are constrained to allow these appeals partly and modify the scheme as above. It is ordered accordingly.

The modified scheme would be as follows :

SCHEME u/s 50 OF THE BOMBAY PUBLIC TRUST''S ACT, 1950 TO SRICHITRAPUR MATM SHIRALI.

1. (a) The office of the Trust shall be situated at Shri Chitrapur Math'', Shirali in

Bhatkal Taluk, Uttar Kannada District.

(b) ''Math'' shall mean the Trust and registered under the Bombay Public Trusts Act, bearing registration No. PTR No 347 (Karwar).

(c) ''Matadhipathi'' shall be the spiritual head as well as the Sole Trustee of the Math.

(d) ''Mahasabha'', ''Standing Committee'', ''Local Sabha'' and other functionaries contemplated under the Constitution of the Math shall be constituted on democratic principles as provided therein including permissible nomination that may be made by '' ''matadhipathi''. Such functionaries shall aid and assist the Matadhipathi and discharge duties as are entrusted by the ''Matadhipathi'' and exercise such powers as are conferred under the Constitution of the Math.

(e) ''The Constitution of the Math'' Means, Constitution as modified by the Math in 1974 and it shall form an integral part of this scheme.

2. OBJECT OF THE MATH :

The object of the Math are - (a) worship of Lord Bhavani Shankar and other Hindu deities and of the Samadhis and Shrines of Gurus, of the community; (b) the upliftment of the spiritual welfare and general well being of Chitrapur Saraswat Community; (c) the propagation of Hindu Sanathana Dharma and to carry on poojas of the deities of the above temples and to observe festivals according to the prevailing practice or with such modification as may be found expedient and suitable.

3. PROPERTIES OF THE MATH :

Properties both moveable and Immovable possessed by the Math and all belongings including accretions shall be the properties of the Math except ''Padakanike''.

4. HIS HOLINESS, THE SWAMIJI :

1. His Holiness, the Swamiji being the spiritual head of the community and Matadhipathi of Shri Chitrapur Math, Shirali, shall have full and absolute power, authority and control over - (a) all matters pertaining to administration and propagation of Dharma and spiritual instructions to be imparted to the laity of the Math, and (b) all religious affairs including secular administration and performance of poojas etc., at temples belonging to the Math:

5. QUALIFICATION OF THE MATADHIPATHI:-

1. The religious Head of the Community shall be a celibate sanyasi initiated by the Guru Swamiji - Peetha holder of the Math :

Provided that in the event of Matadhipathi being vacant for any reason, the laity, by a special resolution at a special meeting called for the purpose may request any ''Kindred Math'' to initiate (or nominate) a Shishya, Guru or Matadhipathi.

2. Matadhipathi so initiated shall undergo necessary training in Hindu scriptures and Hindu Dharma so as to be fit to impart spiritual instructions and guidance to the community and observe Rules of Conduct to maintain the dignity, sanctity and respect of the Peetha and the spiritual well being of the Chitrapur Saraswat Community.

6. ACCOUNTING YEAR :

Accounts shall be balanced on 31st of March or on such other day, as may be fixed by the Commissioner. The Math shall keep regular accounts in such form as may be approved by the Commissioner and contain such particulars as may be required - vide Section 32 of the Act.

7. Accounts shall be audited by any one of the persons enumerated in Sub-section (2) of Section 33 of the Act and for this purpose, the person auditing shall have access to accounts and to all books, vouchers and other documents and records in possession or under the control of the Manager of the Math.

8. The Auditor shall prepare annually the Balance Sheet and the Income and Expenditure statement and submit the same to the Court of original jurisdiction i.e., District Court while forwarding copies to others mentioned in Sub-section (t) of Section 34.

9. The Auditor shall in his report specify cases of irregular, illegal or improper expenditure, or failure or omission to recover monies or other property belonging to the Trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person - vide Sub-section (2) of Section 34 of the Act.

10. Where the trust property consists of money and cannot be applied immediately, the trustee shall be bound to invest the money in public securities - the Trustee with the permission of the Charity Commissioner granted by general or special order invest the money in any other manner.

11. The Trustee shall be bound by restrictions imposed for alienation of properties u/s 36 of the Act.

12. The surplus amount or income of the Math shall be utilised on the cypres principles as may be directed by the Court or on an application made to it either by Trustee or by Commissioner and if the Court is of the opinion that carrying out of such intention or object is wholly or partially expedient, practicable, desirable or necessary in public interest, it may direct the property or income of the Trust or any portion thereof be applied cypres to any other charitable or religious object. In doing so, it shall be lawful for the Court to after any scheme already settled to vary the terms of any decree or order already passed or conditions contained in this instrument - vide Section 56 of the Act.

13. Such a direction preferably shall be for the (1) establishment educational institutions, for the promotion amongst Hindus of the Teachings the Hindu Religion and Sgastras, with library and suitable buildings inclusive of residential quarters for the teaching staff as well as hostel accommodation for Students shishyas ; (2) distribution of prizes annually to persons possessing/acquiring proficiency in the one or other of the various Hindu Shatras. Rules for the management of the College and award of prizes shall be as framed by the Standing Committee and as may be approved by the Matadhipathi ; and (3) Construction and maintenance of hospitals for the general public, construction and maintenance of choultries or rest-houses for the pilgrims and worshippers.

14. No jewels and other moveable properties exceeding the value of Rs.500/- shall be sold without the sanction of the District Court.

15. Liberty is given to the prospective Matadhipathi or any disciple interested in the Math to apply to the District Court to seek directions for the implementation of the scheme and seek such other variation if necessary. This shall form part of the 1974 Constitution of the Math, as amended.

48. This Court by its interim order, dated 8th November 1984 passed on I.A.No. 3 had appointed an Administrator to be in charge of the affairs and administration of the Math. If the Standing Committee constituted under the Constitution of the Math is not functioning or is not in existence, the Administrator shall take such steps for the election of delegates to Mahasabha and to the Standing Committee in accordance with this Constitution which is treated as an integral part of the Scheme within four months from to-day and that Standing Committee shall be allowed to function under the supervision of the Court till the initiation of Matadhipathi, conferring such rights and/or imposing such restrictions as are permissible under law by way of an adhoc arrangement.

We conclude: our Judgment with a note of optimism that the parties will earnestly realise that their individual rights and prestige must yield to the interest of the Math and of the Saraswat Community in general to which they belong.

